STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL GARNETT,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED
June 24, 1997

No. 194389
Court of Claims
LC No. 95-015867-CM

Before: Reilly, P.J., and Hood and Murphy, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendant pursuant to MCR 2.116(C)(4) on the basis that the circuit court lacked subject matter jurisdiction. We affirm.

Plaintiff claims that he was wrongfully discharged from his employment in contravention of his union's collective bargaining agreement with defendant. His union pursued his claim through a three-step grievance process, but declined to exercise its option to initiate arbitration. The collective bargaining agreement provides that this process is the exclusive method of resolving contractual disputes.

Plaintiff filed an administrative complaint with the Civil Service Commission alleging breach of contract against the employer and breach of the duty of fair representation against his union. He withdrew the Civil Service complaint against the employer, and the claim against the union was dismissed by an administrative law judge for failure to articulate sufficient facts to support the claim.

Two lawsuits followed. In addition to this suit against defendant, plaintiff filed a separate lawsuit against his union for allegedly breaching its duty of fair representation. He voluntarily dismissed the suit against the union for reasons that are not clear from the trial court record.

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(4). We disagree. Summary disposition should be granted where, as here,

the trial court lacks jurisdiction over the subject matter of a dispute as a matter of law. *Walker v Johnson & Johnson Vision Products*, 217 Mich App 705, 707-708; 552 NW2d 679 (1996).

Defendant and plaintiff's union provided for a binding method of resolving plaintiff's wrongful discharge claim in the collective bargaining agreement. *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 624; 292 NW2d 880 (1980). The three-step grievance process was followed in plaintiff's case, but his claim was not resolved to his satisfaction. The union's executive board decided not to appeal the matter to binding arbitration, which is the fourth step of the grievance process. Because this matter was not submitted to binding arbitration, plaintiff has not exhausted his administrative remedies against his employer. *Jones v Dep't of Corrections*, 185 Mich App 134; 460 NW2d 575 (1990).

Plaintiff argues that he could not submit his claim to arbitration because his union refused to do so. This does not excuse non-compliance. If his union wrongfully refused to prosecute his claim, plaintiff's remedy is to file a petition against the union alleging a breach of the duty of fair representation. Plaintiff filed an administrative petition against his union for an unfair labor practice, but he did not appeal that petition's dismissal. Accordingly, he has failed to exhaust his administrative remedies relating to the union's duty of fair representation. *O'Keefe v Dep't of Social Services*, 162 Mich App 498; 413 NW2d 32 (1987); *Bonneville v Michigan Corrections Organization*, 190 Mich App 473; 476 NW2d 411 (1991).

Plaintiff argues that he may proceed against his employer in this case and merely prove that his union breached its duty of fair representation as an element of his claim against the employer. We disagree. We are concerned that the union may be a necessary party to a suit alleging a breach of its duties, see *Gersbacher v Commercial Carriers, Inc*, 91 FRD 533 (ED Mich, 1981) (union may not be necessary party where plaintiff seeks only money damages, but is necessary party where plaintiff seeks reinstatement with seniority), but we are unable to make a finding on this point because plaintiff's prayer for relief is too vague. The Supreme Court in *Vaca v Sipes*, 386 US 171, 187; 87 S Ct 903; 17 L Ed 2d 842 (1967), contemplated that the union would be sued either together with the employer or separately, but that a suit would be maintained against the union in any event. Here, plaintiff voluntarily dismissed his lawsuit against the union. Nonetheless, we believe plaintiff is also required to exhaust his administrative remedies against the union *even if* he may sue the employer alone. By failing to appeal the administrative dismissal of his claim against the union, plaintiff has failed to exhaust those remedies. *O'Keefe, supra*.

Plaintiff does not cite any valid excuse for failing to exhaust his administrative remedies. Plaintiff's reliance on *Vaca v Sipes, supra*, is misplaced because the plaintiff in that case did not have any remaining administrative options against either his employer or his union. Our plaintiff, on the contrary, has additional administrative options available to him where he can show that his union should be compelled to pursue arbitration of his claim against the employer.

Plaintiff failed to proceed to arbitration against his employer, and he failed to properly appeal the dismissal of his petition against the union. He therefore failed to exhaust his administrative remedies, and the circuit court thus lacked jurisdiction to hear this matter. Summary disposition was properly granted.

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Harold Hood
/s/ William B. Murphy